

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT



Application No. 13750, of Bruce E. and Melanie L. Fein, pursuant to Paragraph 8207.11 of the Zoning Regulations, for variances from the prohibition against allowing an addition to a non-conforming structure which now exceeds the lot occupancy requirements (Paragraph 7107.21), the lot occupancy requirements (Sub-section 3302.1 and Paragraph 7107.23), and the closed court width and area requirements (Sub-section 3306.1 and Paragraph 7107.22) to construct a four story rear addition to a building used as a single family dwelling and rooming house in an R-5-B District at the premises 1763 R Street, N.W., (Square 153, Lot 20).

HEARING DATES: May 26, June 2 and November 10, 1982
DECISION DATES: July 7, August 11, October 6 and December 1, 1982

FINDINGS OF FACT:

1. The subject application was scheduled for public hearing on May 26, 1982. At that public hearing, the Chairman ruled that the case would be continued due to the lateness of the hour and the number of applications still to be heard on that date.

2. The public hearing on the subject application was continued to June 2, 1982, at which time the Board considered the application for variance relief necessary to construct a four-story rear addition to the subject building. The application was denied by the Board at its public meeting of August 11, 1982.

3. Prior to the issuance of a final order in the subject application, the applicants submitted a Motion for Further Hearing by the Board. At its public meeting of October 6, 1982, the Board granted the applicants' Motion for Further Hearing. After due notice to the affected parties, a further hearing was conducted on November 10, 1982.

4. The subject property is located on the north side of R Street, between New Hampshire Avenue and 18th Street, and is known as premises 1763 R Street, N.W. It is zoned R-5-B.

5. The subject property is rectangular in shape, having a width of twenty-feet and a depth of ninety-five feet, for a lot area of 2,375 square feet.

6. The subject property is improved with a four-story and partial basement brick row structure which was constructed circa 1909-1910. The structure is presently occupied by the applicants' extended household which consists of the applicants, their three children, a mother-in-law, a housekeeper with two children and one student-tenant. The structure has a valid Certificate of Occupancy No. B-117019, for a rooming house, less than five roomers.

7. Uses surrounding the subject property include an office building to the west, row dwellings across the alley to the north, a six unit apartment building and a chancery to the east, and a private club to the south. The site is located adjacent to an SP-1 District to the east and south.

8. The existing structure was constructed and occupied as a single family residence with servants quarters until approximately 1947. The kitchen serving the residence was located on the first floor and food was transported by a dumb waiter to a pantry on the second floor where the dining and living area were located.

9. In 1947, the structure was purchased and converted to office use by the Salvation Army. In 1960, the building was occupied by the National Art Academy, a privately owned art school. The building was subsequently leased to the University of Southern California for office and classroom use, which was granted by BZA Order No. 12391, dated July 13, 1977 for a period of one year. BZA Application No. 12864, which requested a continuation of the use by the University of Southern California, was dismissed by the Board's Order dated November 28, 1979.

10. During the course of the building's use as office and classroom space, the kitchen on the first floor was removed. Subsequent to the applicants' purchase of the building, the small pantry on the second floor was converted into a "makeshift kitchen" to serve the applicants' family. No bathroom facilities are provided on the second floor of the structure.

11. The structure occupies the full width of the lot except for a rear addition which is approximately twelve feet in width for a depth of approximately twenty-five feet. The rear portion of the structure was built in approximately 1927 and it contains a stairwell running the entire height of the building and several small rooms which were used for servants quarters.

12. The third and fourth floors of the rear addition to the building contain former servants quarters which are located on either side of the fire stair. The applicants testified that these small rooms fail to meet the D.C.

Building Code space requirements for habitable rooms, they contain no closet space and have no access to separate bathroom facilities, and are thus unsuitable to be rented.

13. The fire stair located in the rear addition is enclosed by two heavy metal fire doors on each floor. The applicants testified that traversing the fire stair through these doors to reach the northernmost rooms in the structure creates a practical difficulty. The applicants testified further that this is especially true on the second floor where the small rear room at the north of the structure is used for storage of kitchen goods and equipment and can only be reached thru the fire stair.

14. The applicant proposed to construct a four-story addition which would provide for a carport on the first floor, allow the applicants to expand the second floor to include additional kitchen area, a bathroom and a playroom, enlarge the small rooms in the rear of the structure and add a bathroom on each floor in order to create rentable living space. One of these rentable spaces would be occupied by the housekeeper and her two children and the other would be rented to students.

15. By memorandum dated May 24, 1982, the Chief of the Zoning Review Branch amended his original memo of January 29, 1982, and indicated that the following variance relief was required for the proposed four story addition:

- a. The allowable lot occupancy for the R-5-B District is sixty per cent or 1,425 square feet for the subject lot. The existing structure occupies approximately sixty-eight percent of the lot or 1,666.86 square feet. The proposed addition would increase the lot occupancy by 326.55 square feet for a total lot occupancy of 1,993.41 square feet. A variance of 568.41 square feet or 39.88 percent is required.
- b. The allowable floor area ratio of 1.8 permits 4,275 square feet. The existing structure has 6,667.44 square feet. The proposed four story addition would consists of 1,306.2 square feet, for a total of 7,973.64 square feet. A variance of 3,698.64 square feet or 86.51 percent is required.
- c. The applicants proposed to provide a closed court which is 85.46 square feet in area and three and one-half feet in width at its narrowest point. The Zoning Regulations require a closed court to have a minimum area of 350 square feet and a minimum width of fifteen feet. Variances of 264.54 square feet or seventy-five percent from

the closed court area requirements and 11.50 foot or seventy-seven percent from the closed court width are required.

16. The subject structure is also presently non-conforming as to rear yard, in that a fifteen foot rear yard is required and an eleven foot rear yard is provided.

17. The applicants testified that there is a stairwell located in the front portion of the structure, which is not enclosed, for access to the front portion of the dwelling. The fire stairwell at the rear is necessary to provide two means of egress as required by the D.C. Building Code.

18. The former servants quarters on the third and fourth floors are unused by the applicant at present due to their small size and location adjacent to the fire stair. The applicants testified that although the rooms are small, when combined with the fire stair and the hall, this space constitutes approximately twenty-five percent of the area of the third and fourth floors. The type of heating system used in the structure requires that this unused space be maintained in keeping with the occupied portions of the building to keep the pipes from bursting. The unused space constitutes an economic burden upon the applicants.

19. The small room at the rear of the addition on the first floor is presently used as a laundry room and the stairwell provides access to the rear parking space.

20. The existing structure includes an air well on the northeast boundary. The proposed addition would partially enclose the air well and create a closed court approximately seven feet wide. Fifteen feet are required. No windows other than those of the subject property would face into the court. The court would meet the building code requirements for light and ventilation. The proposed addition will not extend into the rear yard further than the present extension of the structure.

21. The location of interior fireplaces, windows and doorways precludes the rearrangement of the existing interior space to provide for the enlargement of the kitchen and bathroom on the second floor or to make use of the former servants quarters on the third and fourth floors.

22. There is a mature tree located on the north side of the alley to the rear of the subject structure. The applicants requested a tree expert from the tree division of the Department of Transportation to inspect the tree in relation to the proposed addition. After the inspection, the tree expert advised the applicants that the proposed addition would require removal of only one or two limbs representing

five to ten percent of the tree's foilage and would not harm the tree.

23. Mr. Harold Bailey, the student tenant at the subject premises, testified in support of the application. Mr. Bailey testified that the small rooms on the third and fourth floors of the subject structure were not habitable because they lack sufficient living area, lack closet space and lack access to a separate bathroom. In addition, Mr. Bailey testified that the addition would not curtail the light, air and privacy of the adjoining property or harm the existing tree.

24. Ms. Rosalee Fein testified in support of the application. Ms. Fein resides on the fourth floor of the subject premises. Ms. Fein testified that she prepares most of the meals for the Fein household and that the existing kitchen is cramped and causes multiple difficulties in the preparation of meals. She testified that it is difficult for more than one person to be in the kitchen at a time, due to the lack of space. Frequent trips to the storage room on the other side of the fire stairs to retrieve ingredients, supplies and equipment are inconvenient as well as dangerous to the small children who either seek to follow her through the stairwell and run the risk of a fall or must be left behind in the kitchen where they may become distraught or create mischief. The children cannot be carried because the doors are heavy metal and require at least one hand to open, while the other hand would be carrying equipment from the storage room. The addition would allow space to supervise the children and access to the storage room other than through the fire stair and bathroom, which would eliminate the need to use the third floor facilities.

25. The record contains several letters and a petition expressing support for or no objection to the proposed addition.

26. Ms. Judy Morris, a resident of 1742 Riggs Place, N.W. which abuts the alley to the north of the subject property, appeared at the public hearing of June 2, 1982, in opposition to the application. Ms. Morris' objection was based on the impact which the addition would have on the character, light and air in the alley. Ms. Morris testified that the alley was unique in its openness and aesthetically pleasing due to the "umbrella" effect created by two large mature trees abutting the alley. Ms. Morris was concerned that the bulk of the proposed addition would adversely affect the alley by creating a "fortress" effect.

27. Ms. Charlotte Levine, owner of the apartment building immediately to the east of the subject property, appeared in opposition. Ms. Levine testified that the addition would be too close to the narrow alley, would

decrease the amount of light and air, would decrease the aesthetic appearance of the apartment building by injury to the mature tree to the north of the alley, and because of the windows in the proposed addition, would infringe upon her tenants' privacy. Ms. Levine further stated that the building is too large as it presently exists and that in her opinion and that of her architect, alternative arrangements of the interior space could eliminate the practical difficulties experienced by the applicants.

28. Ms. Harriett Hubbard representing the Dupont Circle Citizens Association, testified in opposition to the application. Ms. Hubbard recommended denial of the application on the grounds that the applicants had not proven their case, the structure already exceeds the requirements of the Zoning Regulations, the alley to the north of the property is narrow, the addition would further block access to parking from the alley, and that the area is overcrowded. Ms. Hubbard was further of the opinion that the practical difficulties described by the applicants are created by the size of the household and would be temporary in nature and therefore did not justify the granting of any area variance relief.

29. Ms. Kathy Lipscomb presented the statement of Advisory Neighborhood Commission 2B at the public hearing. The ANC was opposed to the proposed addition to the already non-conforming structure because it will affect the light and air of adjacent properties and might harm the existing tree.

30. The Office of Planning and Development, by memorandum dated May 21, 1982, recommended that the application be denied. The OPD's recommendation was based on the excessive lot area and lot occupancy of the existing building and the density of the proposed addition. The OPD further was of the opinion that the construction difficulties due to the existing floor plan did not constitute a hardship.

31. At the public meeting of the Board on July 7, 1982, a motion to grant the application made by Walter B. Lewis, seconded by Charles R. Norris, failed for lack of a majority by a vote of 2-1 (Walter B. Lewis and Charles R. Norris to grant; Connie Fortune opposed to the motion; Douglas J. Patton and William F. McIntosh not voting, not having heard the case). Board members William F. McIntosh and Douglas J. Patton were requested to read the record and be prepared to vote at the public meeting of August 11, 1982.

32. At the public meeting of the Board on August 11, 1982, a motion made by Walter B. Lewis, seconded by Charles R. Norris, to grant the application failed for lack of a majority of the members of the Board by a vote of 2-3

(Walter B. Lewis and Charles R. Norris to grant; William F. McIntosh and Douglas J. Patton opposed to the motion; Connie Fortune opposed to the motion by proxy). On a motion made by William F. McIntosh, seconded by Douglas J. Patton, the Board denied the application by a vote 3-2 (William F. McIntosh, and Douglas J. Patton to deny; Connie Fortune to deny by proxy; Walter B. Lewis and Charles R. Norris opposed to the motion). Discussion by the Board members during the consideration of the case indicated concern that the height and floor area of the addition was excessive and that the applicants had not adequately addressed alternatives which would provide the required interior layout but not create the additional floor space, height and extension into the rear yard proposed.

33. On August 24, 1982, the applicants filed a Motion for Further Hearing, requesting the Board to consider (a) The availability of practical alternatives for restructuring the interior space of the structure and (b) Whether smaller variances that would partially alleviate the alleged practical difficulties could be granted. The applicants' motion noted that a statement discussing possible alternatives, marked as Exhibit No. 50, Appendix A of the record, was submitted at the public hearing but was not read into the transcript in order to avoid prolonging the testimony at that time.

34. At its public meeting of October 6, 1982, the Board granted the applicants' Motion for Further Hearing by a vote of 4-1 (Walter B. Lewis, William F. McIntosh, Douglas J. Patton and Charles R. Norris to grant; Connie Fortune opposed to the motion). A further hearing, limited to the sole issue of testimony by the applicant on possible alternatives to the proposed addition and cross-examination of the applicants by the other parties, was scheduled for November 10, 1982.

35. At the further hearing, held on November 10, 1982, the applicants discussed fifteen alternative plans which they explored prior to applying for the variances necessary for the proposed four-story addition, as follows:

- a. Remove the rear stairwell -- This alternative would allow the kitchen to be enlarged but offers no space for a playroom or bathroom on the second floor. In addition, it would eliminate direct access to the outside rear of the building where parking is provided, and would require the applicants to use the front stairway which would require walking through the rented space on the first floor. The existing rear stairwell is a certified fire stairway and its removal would create difficulties in renting the rear part of the building in that the D.C. Building Code

requires each dwelling unit in a four-story building to have two fire exits.

- b. Relocate the stairs to the extreme rear of the building -- The cost of this alternative would far outweigh the gain in space that would ensue. The small rooms on the third and fourth floors could be consolidated into habitable space but there would not be sufficient room to add a bathroom and closet to serve this space. The new stairwell would be required by the D.C. Building Code to be constructed out of concrete and steel which would not be in keeping with the character of the building. Relocation of the stairs would also require relocating nine to twelve windows. This alternative offers no space for a bathroom or playroom on the second floor.
- c. Design the kitchen around the existing stairwell -- This alternative is not feasible because the stairwell must be kept closed off at all times by doors with automatic closers in order to comply with the D.C. Building Code requirements for fire safety. The kitchen would either be segmented into two parts or would remain obstructed by the two metal fire doors.
- d. Convert the room in the rear of the second floor to a bathroom -- The rear room is currently used as an auxillary room for the storage of kitchen goods and equipment. Access would be difficult because of the heavy fire doors and the stairs, especially for children.
- e. Expand the kitchen into the dining room -- This alternative would require removal of a large fireplace which occupies almost the entire wall between the kitchen and dining room. Moreover, the fireplace contains the chimney that vents the furnace from the basement and could not be moved without great difficulty and expense, if at all. This plan also offers no space for a bathroom or playroom on the second floor.
- f. Extend the dining room into the airwell to create additional kitchen space -- This alternative would require the construction of a floor over the existing airwell and would reduce or eliminate light and air to two large rooms on the first floor and would not be allowed by the D.C. Building Code. This alternative would also require removal of the existing fire escape in the airwell. This addition would require a variance also.

- g. Convert the living room or hall into a playroom -- This would create difficulty in supervising children since they would not be close to the kitchen and would have access to the stairs leading to the floors above and below. It would not eliminate the hazard of toys obstructing the main thoroughfare of the house since no closets are provided and requires relocation of the library and damage to the architectural layout and detailing.
- h. Locate the playroom on the first or third floors -- Either location would be too remote from the kitchen and would result in supervisory problems for the children.
- i. Relocate the kitchen on the first floor -- The formal dining room is located on the second floor and the logistics of moving food and dishes from one floor to the other would create practical difficulties.
- j. Relocate the kitchen and dining room on the first floor -- This alternative would segregate the living space in such a way as to make it impractical because the bedrooms would be two stories away, and the children would have to negotiate two flights of stairs and could not be heard from the kitchen.
- k. Relocate the kitchen and dining room on the first floor -- This alternative would segregate the living space in the house in such a way as to make it impractical as a residence.
- k. Rent the rooms on the upper floors "as is" -- This would not be practical because there are no separate bathroom facilities or closets currently serving these rooms. Two of the rooms are uninhabitable under the D.C. Building Code which requires a minimum of seventy square feet. This fails to address the need for an enlarged kitchen, playroom and bathroom on the 2nd floor.
- l. Enlarge the kitchen and add a playroom and bathroom to the second floor -- This would not facilitate productive use of the third and fourth floors.
- m. Build up to the third floor only and eliminate any enlargement of the fourth floor -- The fourth floor would remain unproductive and only one exit would serve that space.

- n. Build the addition only halfway to the rear -- This would not include a playroom for the children and would result in continued difficulty in using the very rear rooms on the second, third and fourth floors.
- o. Build only half of the addition on the second and third floors -- This alternative suffers from the same defects as the previous alternatives.

36. The applicants testified at the public hearing that in order to address Ms. Levine's concerns regarding the privacy of her tenants, the addition could contain frosted windows on the side adjacent to the apartment building.

37. Ms. Levine proposed an alternative providing for a two-story addition which would extend into the rear yard for only half of the distance of the existing rear extension of the building and which would enlarge the existing kitchen and add a bathroom but would not provide a playroom.

38. Mr. Jonas Morris, resident of 1762 Riggs Place, N.W., appeared at the further hearing and testified that although he is opposed to the proposed addition, he would be willing to consider an alternative proposal which would be less bulky than that proposed. Ms. Levine also indicated her willingness to consider a proposal for a two-story addition.

39. Upon the applicants' request, the Chairman ruled that the record would be left open to afford the applicants and the parties in opposition an opportunity to meet and discuss the possibilities of reaching a compromise and submission of plans reflecting the results of that meeting and the responses of the opposition to those plans.

40. By letter dated November 18, 1982, the applicants indicated that a meeting with Ms. Levine and Mr. and Mrs. Morris took place on November 14, 1982. As a result of that meeting, the applicants and opposition agreed that a two-story addition would partially alleviate the practical difficulties upon the applicants and accommodate the concerns of the opposition. Exhibit No. 70A of the record reflects the two-story addition proposed by the applicants.

41. By letter dated November 18, 1982, Mr. and Mrs. Morris stated that they had reviewed with the applicants plans limiting the proposed addition to two stories, the first to be an open carport and the second containing a kitchen, playroom and lavatory. The letter stated further that they would prefer that no addition be made in order to preserve the amount of light and air in the alley, but they have agreed to the compromise for the sole purpose of

enhancing living conditions within the building as a single family dwelling.

42. By letter dated November 22, 1982, Ms. Levine indicated her agreement with the proposal to limit the addition to two stories. Ms. Levine disagreed with the depth of the proposed two-story addition and submitted plans for an addition which would have a depth eight feet less than that proposed and would allow expansion of the existing kitchen and the provision of a lavatory on the second floor. Ms. Levine also expressed a preference that no addition be made as stated in the November 18 letter from the Morris's, but agreed to the compromise for the sole purpose of enhancing living condition within the building for use as a single family home.

43. At its public meeting of December 12, 1982, the Board considered the plans submitted by the applicants and the opposition's responses thereto in addition to the original proposal.

44. The Board finds that the construction of a four-story addition to the rear of the existing non-conforming structure would require substantial variances, from the floor area, lot occupancy, rear yard and court requirements as described in Finding of Fact No. 15.

45. With regard to the second floor, the Board finds that the configuration of the building and the existing rear addition create practical difficulties to the applicants in utilizing the second floor as a central living area, as described in the record. There is no access to the northernmost room except through the existing fire stairs. The applicants have explored many alternative architectural approaches which would allow them to enlarge the existing kitchen and provide play and bath facilities on the second floor. The interior placement of the fire stairs, windows and existing chimneys prevent the rearrangement of interior space in a manner which would practically enlarge the kitchen space.

46. The Board finds that the applicant's desire to extend the third and fourth floors is primarily based on the inability of the applicant to rent the existing space as is. The inability of the applicants to create viable rental space and gain a higher economic return on their property is not a proper basis upon which the Board could grant a variance. The granting of variance relief is not predicated on economic hardship to the applicants.

47. The Board is required to give "great weight" to the issues and concerns of the Advisory Neighborhood Commission. In addressing these concerns, and the concerns of the Dupont

Circle Citizens Association and the neighboring owners, the Board finds that:

- a. The proposed addition will not extend beyond the northern edge of the existing rear addition and therefore will not create any additional impact on the light and air in the alley or its character.
- b. The mature tree located to the north of the alley will not be damaged, as noted in Finding of Fact No. 22. In addition, the Board notes that the subject tree is not located on the applicant's property. The "umbrella" effect created by the existing mature trees located along the alley will continue the flavor the alley's existing character.
- c. The privacy of the tenants of the adjacent apartment building will not be compromised further. The existing rear addition has windows on its eastern side which presently afford the occupants a view of the rear of the apartment building. The addition will also have windows on the eastern side but does not create a substantially new situation with regard to the view of the apartment building from the subject structure.
- d. The first floor of the proposed addition will provide an open carport covering the area of the site currently used for parking by the applicants. Access to this parking space from the alley will not be impacted by the proposed addition.
- e. The existing structure is presently non-conforming. Any addition to the structure would require variance relief.
- f. The use of the structure as a rooming house and residence is permitted in the R-5-B District. The Board notes that the number of members of the applicants' household may change but the structure is still limited to uses permitted in the R-5-B District.

CONCLUSIONS OF LAW AND OPINION:

Based on the findings of fact and the evidence of record, the Board concludes that the applicant is requesting area variances, the granting of which requires the showing of an exceptional or extraordinary condition of the property which creates a practical difficulty upon the owners. The Board concludes that the configuration of the existing structure which pre-dates the 1958 Zoning Regulations and the existence of a very small kitchen constitutes an

exceptional condition within the meaning of the Zoning Regulations. The Board further concludes that the strict application of the Zoning Regulations would prevent the applicants from building a reasonably sized and appropriately located addition to make the structure a functional single family dwelling/rooming house utilizing existing space in the structure which is presently not easily accessible. The Board further concludes that there is no practical alternative to providing an addition or for the location of the addition as now proposed.

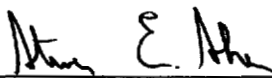
The Board has carefully considered the objections raised by the Advisory Neighborhood Commission and the opposition. The Board concludes that the record reflects a variety of factors which tend to reduce any adverse impacts of the proposed addition on adjoining property. The Board notes the efforts of the applicants and the opposition to reach a compromise which would address both the needs of the applicants and the concerns of the opposition.

The Board concludes that it has accorded to the ANC the "great weight" to which it is entitled. The granting of the requested variances, as hereinafter conditioned, will not substantially impair the availability of light and air or the privacy and use of adjoining properties or the alley. The Board further concludes that the requested relief can be granted without substantial detriment to the public good and without substantially impairing the intent, purpose and integrity of the zone plan as embodied in the Zoning Regulations and map. It is therefore ORDERED that the application is GRANTED, SUBJECT to the condition that construction is limited to two stories and shall be as indicated on Exhibit Nos. 70A and 70B of the record.

VOTE: 5-0 (Walter B. Lewis, Carrie Thornhill, William F. McIntosh, Douglas J. Patton and Charles R. Norris to GRANT).

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT

ATTESTED BY:


STEVEN E. SHER
Executive Director

FINAL DATE OF ORDER:

MAY 31 1983

UNDER SUB-SECTION 8204.3 OF THE ZONING REGULATIONS, "NO DECISION OR ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN DAYS AFTER HAVING BECOME FINAL PURSUANT TO THE SUPPLEMENTAL RULES OF PRACTICE AND PROCEDURE BEFORE THE BOARD OF ZONING ADJUSTMENT."

THIS ORDER OF THE BOARD IS VALID FOR A PERIOD OF SIX MONTHS AFTER THE EFFECTIVE DATE OF THIS ORDER, UNLESS WITHIN SUCH PERIOD AN APPLICATION FOR A BUILDING PERMIT OR CERTIFICATE OF OCCUPANCY IS FILED WITH THE DEPARTMENT OF LICENSES, INVESTIGATIONS AND INSPECTIONS.

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